

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for the loss of his personal items that were stolen during a break and enter. Both parties attended and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started in December 2009. The monthly rent is \$1,400.00. The tenant stated that on September 28, 2010, thieves broke into the rental unit by prying open his balcony door and stole some of his personal belongings. The thieves gained access to the balcony by climbing on full garbage bags that were placed on the floor of the balcony that was located directly below the tenant's balcony. The tenant stated that the suite below was empty and the landlord was carrying out repairs. Garbage from the repair work was placed in the balcony which the thieves used as stepping stones to the balcony above.

The landlord stated that other than broken glass there was no garbage in the balcony below the tenant's balcony. She also stated that the tenant was responsible for insuring his personal belongings and therefore she was not responsible for any loss that the tenant has incurred.

The tenant is claiming \$1,000.00 for a bike and a total of \$5,428.95 for two laptops, 2 computers and two hard drives.

The tenant stated that the items were all new and purchased after he moved into the rental unit in December 2009. The tenant did not file any evidence to support this claim.

### **Analysis**

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Based on the testimony of both parties, I find that the robbery was not as a result of negligence on the part of the landlord. In addition, the tenant has not filed any evidence to show that the loss occurred and what it was valued at.

The tenant's claim does not satisfy the components of the above test and therefore does not meet the burden of proof. Accordingly the tenant's application must be dismissed.

**Conclusion**

The tenant's claim is dismissed in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 11, 2011.

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Residential Tenancy Branch